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V. Mani Vs. Madras Metropolitan Development Authority, Sites and Service Committee and Three ors.

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Court : Chennai

Decided On : Jun-26-1996

Reported in : 1996(2)CTC164; (1996)IIMLJ502

Judge : K.A. Swami, C.J. and ;AR. Lakshmanan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.A. No. 126 of 1995

Appellant : V. Mani

Respondent : Madras Metropolitan Development Authority, Sites and Service Committee and Three ors.

Advocate for Def. : A. Chellakumar, Adv. for Respondent No. 1, ;D. Murugesan, Adv. for Respondent No. 2, ;N. Kannadasan, Adv. for Respondent No. 3 and ;M. Sekar, Adv. for Respondent No. 4

Advocate for Pet/Ap. : M. Ravindran, Sr. Counsel for ;H. Rajasekar, ;P. Ravishankar and ;D. Sreenivasan, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

K.A. Swami, C.J.

1. This appeal is preferred against the order dated 3.1.1995 passed by the learned single Judge dismissing W.P. No. 1445 of 1994. In the writ petition the petitioner sought for quashing the Resolution No. 90/93 of the first respondent as communicated to the petitioner in letter No. SS. 1/20903/93 dated 9.12.1993 and consequently forbear the respondents from permitting or issuing any licence in favour of the fourth respondent or to anybody else at Shop No. 1, M.M.D.A. Colony, Arumbakkam, Madras-106 to run a flour-cum- shikkakai mill by issue of a writ of certiorarified mandamus.

2. Learned single Judge has dismissed the writ petition by holding the denial of flour mill licence to the fourth respondent, or refusing to permit to run a flour mill in Shop No. 1 in question would be denying the right of the fourth respondent to locate a flour mill and it would affect his business. Learned single Judge has further opined that the one is a mixed resident zone. Therefore, the petitioner has no right to question the decision of the Madras Metropolitan Development Authority (hereinafter referred to as 'M.M.D.A.') permitting a change in the nature of use of the shop to run a flour mill. Learned single Judge has further held that the petitioner has no right to challenge the permission granted to the fourth respondent to run a flour mill at the premises bearing Shop No. 1 situate in M.M.D.A. Colony, Arumbakkam, Madras.

3. The contention of the appellant as well as the third respondent is that the shop in question belongs to Tamil Nadu Housing Board (hereinafter referred to as 'T.N.H.B.'). It was constructed with the aid of World Bank. With a view to secure good rent Shop Nos. 1 to 17 were reserved for specified trade, whereas Shop Nos. 18 and 19 were not reserved for any specified trade, and allottees of Shop Nos. 18 and 19 were free to run any trade according to law. Fourth respondent applied for shop No. 1, which was specified for running a provision shop, whereas, the petitioner/appellant applied for Shop No. 19 which was not earmarked for running any specified trade and, there was an option to use it for any other

purpose. The appellant offered a tender for Rs. 1,05,000 whereas the fourth respondent offered a tender for a sum of Rs. 51,000. Both were accepted. The leases were granted to the petitioner/appellant as well as to the fourth respondent with a condition that the petitioner would be at liberty to use it for any other trade whereas the fourth respondent should use it only for running a provision store. However, later on, he with the permission of the M.M.D.A. introduced wet grinder business also as it was considered that the wet grinder business was a cottage industry and would be a part of provision store. But, later on, he wanted to establish a flour mill in the very shop. He made an application to the M.M.D.A. for permitting him to use the shop for running a flour mill. The Housing Board, which is the owner of the shop objected to it because the shop was leased only for running a specified trade, viz., provision store. Therefore, the fourth respondent could not be permitted to establish a flour mill in Shop No. I. The Housing Board in its counter-affidavit has stated as follows:

'It is respectfully submitted that the writ petitioner has been allotted a shop bearing No. 19, at MMDA Colony, Arumbakkam in the year 1983 itself, and he has also executed a lease-cum-sale agreement. It is admitted that the writ petitioner has been allotted the above shop to run a flour mill for a sum of Rs. 1,05,000 whereas the fourth respondent herein was allotted shop No. I, MMDA Colony, for a sum of Rs. 51,000 vide their order No. A84/720, dt. 23.7.81 only to run a provision store. It is further submitted that the fourth respondent 'shop bearing No. I, MMDA Colony was notified only as a provision store whereas for shop Nos. 18 and 19 the applicants were directed to specify the trade other than the trades which were already specified for shop Nos. I to 17. It is only under the said circumstances, the writ petitioner was allotted shop No. 19, to run the flour mill whereas, the fourth respondent has been allotted the shop No. I to run only the provision store.

It is further submitted that it is only the first respondent has passed a resolution bearing No. 90/93, dt. 9.12.93 in favour of the fourth respondent authorising him to run the flour mill in shop No. I. It is further submitted that this respondent has not given any permission in favour of the fourth respondent to run the flour mill.'

The Corporation has also raised the similar objection. Therefore, the M.M.D.A. by Resolution No. 11/87 dated, 21.8.1987 resolved not to grant permission for running a flour mill. However, it resolved to grant permission for running a wet grinder business. The matter stood at that for quite a long period, viz., for six years. In the year 1993, the fourth respondent again approached the M.M.D.A. for permission to run the flour mill. This time, the M.M.D.A. appears to have changed its stand. It passed the Resolution No. 90/93 on 9.4.1993 permitting the fourth respondent to run the flour mill, in the premises at M.M.D.A Colony, Arumbakkam, Madras. The Corporation also granted licence pursuant to the permission granted by the MMDA. It may also be pointed out here, as it was brought to our notice by the learned counsel for the Corporation that the father of the fourth respondent filed W.P. No. 461 of 1994 for quashing the order dated 7.1.1994 in ZOVC.HD/9539/93 refusing to grant flour mill licence to the father of the fourth respondent. It may also be pointed here that the Tamil Nadu Housing Board was not made a party to the writ petition. By the order dated 22.7.1994, a direction was given in the following terms:

'But, I am of the view that this Court need not undertake an exercise of adjudication on the merits. Consequently, I direct the 1st respondent to consider the applications said to have been filed both for renewal as also for a fresh licence by the petitioner on merits and in accordance with law taking into account the subsequent developments and pass appropriate orders within four weeks from this date uninfluenced by the earlier order of cancellation and the reasons assigned therefor. The 1st respondent shall objectively consider the claims, if need be after giving an opportunity to the petitioner to make his representations.'

The aforesaid direction came to be issued on the basis that the M.M.D.A. has changed the use of the shop in question. However, in the aforesaid decision, this Court did not go into the question as to whether the lease permitted the fourth respondent to use Shop No. I for any other purpose. Further, T.N.E.B., the lessor of shop No. I was also not made a party. Therefore, the point that arises for consideration is as to whether the M.M.D.A. has power, under the Madras Metropolitan Authority Act, to allow any change in the use of the premises in the city of Madras so as to effect or alter the terms of the contract i.e. lease, between

the owner of the shop and the lessee.

4. Learned counsel for the fourth respondent laid stress on the fact that the area has been converted into commercial-cum-residence area and the flour mill that is going to be installed is a small one, therefore, it does not amount to altering the terms of the lease. However, we find it difficult to agree as long as the terms of the lease deed are not altered.

5. It is not in dispute that T.N.H.B. is the owner of the shop in question. In fact, these applications were sought for allotting shops on lease cum-sale basis and T.N.H.B. allotted the shop. Pursuant to the allotment, the fourth respondent has been granted lease on condition that shop No. 1 should not be used for any other purpose except for running the provision store. The mere fact that the change in use of the area comprised in M.M.D.A. Colony, Arumbakkam, wherein the shop in question is situate, does not by itself enable the fourth respondent to seek licence for running a flour mill in shop No. 1 as long as the terms of lease-cum-sale stand unaltered. We have already pointed out that one of the terms of lease-cum-sale is that shop No. 1 should not be used for any other purpose, except for the purpose which is specified. It is a contract between the parties for the use of the property. In the case of shops which are not specified for running a specified trade the amount fixed is higher than the amount which is fixed for running a specified trade. That being so the M.M.D.A. has acted without the authority of law, and, it has no power to alter the terms of lease-cum-sale between the Housing Board and the fourth respondent permitting the fourth respondent to use the shop in question for running a flour mill. As far as the Corporation is concerned, it is the case of the Corporation that it has only acted on the basis of the resolution of the M.M.D.A. and in the light of the directions given in W.P. No. 461 of 1994. It may be pointed out here that the said direction was not to the effect that the contract between the party should be ignored. In fact the Housing Board was not a party to Writ Petition No. 461 of 1994. That being so, learned single Judge is not right in holding that the petitioner has no right in the matter and also that the right of the fourth respondent is affected by refusing to grant permission since he obtained shop No. 1 on lease-cum-sale base on certain conditions. He is bound by those conditions. Unless those conditions are altered by another agreement between the lessor and lessee

enabling the 4th respondent to make use of the shop for other purpose also, he cannot be permitted to use the shop in question for running a flour mill.

6. For the reasons stated above, this writ appeal is allowed, The order dated 3.1.1995 passed in W.P. No. 1445 of 1994 is set aside. The writ petition is allowed, Resolution No. 90/93 dated 9.4.1993 passed by the M.M.D.A to the extent it permits the fourth respondent to run a flour mill in the shop in question situate in the Arumbakkam Sites and Service Scheme, is quashed. Consequently, the licence granted by the Corporation to the fourth respondent to run the flour mill is also quashed and he cannot run the flour mill in Shop No. 1. No costs.

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